UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
BRIAN JORDAN,	)	1:18-CR-00181-LEW
	)	
Defendant	)	

DECISION AND ORDER ON
DEFENDANT'S MOTION TO SUPPRESS

On December 13, 2018, Brian Jordan was indicted on one count of "knowingly possessing a firearm . . . which was not registered to [him] in the National Firearms Registration and Transfer Record," in violation of 26 U.S.C. §§ 5861(d), 5841, 5845(a), and 5871. Indictment (ECF No. 1). Jordan now moves to suppress his statement given to law enforcement officers on July 19, 2018. Mot. to Suppress ("Motion") (ECF No. 14). A hearing on the motion was held on May 23, 2019. After careful consideration of the arguments of counsel and the record evidence, Defendant's motion to suppress is **DENIED**.

BACKGROUND

The parties do not contest the key facts. On July 19, 2018, Special Agents John Schroepfer and Justin Blais from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") along with Coast Guard Investigative Service Special Agent Mark Root met with and interviewed the defendant, Brian Jordan. Motion, Ex. A ¶ 1 (ECF No. 14-1). This meeting had been arranged with Jordan's consent by Agent Schroepfer, whose stated

purpose was to discuss Jordan's petition seeking the return of three firearms and various ammunition Jordan claimed were his property and which had been seized by the U.S. Coast Guard from Jordan's uncle's boat.[1] *Id.* ¶¶ 1, 3; Stip. Facts ¶ 1 (ECF No. 23, #92). The interview was conducted in an unmarked ATF vehicle parked in the Lamoine, Maine Wal-Mart parking lot. Motion, Ex. A ¶¶ 1, 3; Response, Ex. 1 ¶ 2 (ECF No. 19-1).

Upon Jordan's arrival at the Wal-Mart parking lot, Agent Schroepfer identified himself and the other agents – all of whom were dressed in plain clothes with their service weapons concealed under their clothing – as federal agents and informed Jordan that their conversation would be recorded. Motion, Ex. A ¶ 2; Response, Ex. 1 ¶ 2. Jordan provided his consent and then sat in the back seat of the ATF vehicle and closed his passenger door.[2] Motion, Ex. A ¶ 2. Agent Schroepfer conducted the interview from the driver's seat of the vehicle and left his door open throughout the conversation. *Id.* ¶¶ 2, 4. All three officers were present in the vehicle throughout the interview. Motion 2.

The agents did not provide Jordan with any *Miranda* warnings. Response, 1 (ECF No. 18, #39). During the interview, Jordan made various statements relevant to his petition for the return of the three firearms as well as other topics such as whether he had fired the guns in question, whether he had a history of illicit drug use, and whether he was aware

[1] The Interview Report reflects Jordan asserted ownership of three guns: a .380 caliber Ruger Brand semi-automatic pistol, a 12-gauge Akkar Brand pump-action shotgun, and a .45 caliber Taurus Brand semi-automatic pistol. Motion Ex. A ¶ 3. In addition to these three guns, Jordan claimed ownership of 59 ammunition cartridges of assorted caliber and manufacture. *Id.* In his motion, Jordan underscores that he did not claim ownership of a fourth gun discussed by the agents and Jordan during the interview: the .410, which Jordan asserts "discovery indicates was owned by [his uncle]." Mot. to Suppress 1; *see also* Stip. Facts ¶ 2.

[2] The ATF vehicle was not equipped with a cage or automatically locking rear locks.

that a firearm unrelated to his claim (the .410) had been illegally modified. Motion, Ex. A, ¶ 4. At one point, Agent Schroepfer advised Jordan that federal statutes prohibited Jordan from possessing firearms or ammunition. *Id.* ¶ 5. Agent Schroepfer also warned Jordan that if he later determined Jordan had lied to him, it was "a five-year felony" and Jordan could be prohibited from possessing guns. Response, Ex. 3, 9. Although the officers expressed skepticism regarding Jordan's responses, the tone of the interview remained cordial and professionally pleasant throughout. Response, Ex. 2. At the close of the interview, Jordan requested that his claim for the three firearms and ammunition be withdrawn. Motion, Ex. A ¶ 6. The interview lasted approximately 40 minutes and once complete, Jordan let himself out of the vehicle and returned to his own car. Response, Ex. 1 ¶ 3; *see also* Response, Ex. 2 (ECF No. 18-2). At no point during the interview was Jordan searched or handcuffed. Response, Ex. 1 ¶ 3.

DISCUSSION

The sole issue for resolution of the motion is whether Jordan was in custody and therefore entitled to *Miranda* warnings when he was questioned by the agents.[3] In this fact-intensive inquiry, Jordan asserts that because he was interviewed in an ATF vehicle with the door closed, was surrounded by three federal officers during the interview, and was confronted with questions and allegations that exceeded the purpose for which the interview was scheduled and held the potential to elicit incriminating statements, he was in the "custody" of the agents and entitled to *Miranda* warnings. Motion, 3. By contrast,

[3] During the hearing held on May 23, 2019, Jordan confirmed his sole argument for suppression centers on his contention that he was subject to a custodial interrogation in the absence of *Miranda* warnings. He does not contest whether his statements were unlawfully coerced.

the Government asserts that Jordan was not in custody because the interview was voluntary and professionally pleasant; the officers were in plain clothes with weapons concealed, Jordan was neither searched nor handcuffed, and he retained the ability to terminate the interview by leaving the vehicle at any point. Response, 5. In sum, the Government argues "nothing about the interaction between the agents and the defendant presented a serious danger of coercion consistent with custody"; therefore, the agents were not required to provide *Miranda* warnings and Jordan's statements should not be suppressed. I agree.

The Fifth Amendment guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. IV. To ensure this right, *Miranda* warnings must be provided whenever a defendant is subject to "custodial interrogation." *State v. Preston*, 411 A.2d 402, 405 (Me. 1980). As stated by the Supreme Court, such warnings are "an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere." *Miranda v. Arizona*, 384 U.S. 436, 467–68 (1966). If *Miranda* warnings are not given prior to a custodial interrogation, any statements made by a defendant are inadmissible. *Preston*, 411 A.2d at 405.

An interrogation is considered "custodial" when, as logic would dictate, a defendant is "both 'in custody' and subjected to 'interrogation.'" *United States v. Jackson*, 544 F.3d 351, 356 (1st Cir. 2008). In this inquiry, courts take an objective look at the circumstances of the interrogation and if the overall circumstances would lead a reasonable individual to understand that his situation was "comparable to a formal arrest," then the encounter will likely rise to the level of "custodial" for purposes of the Fifth Amendment. *United States v. Murdock*, 699 F.3d 665, 669 (1st Cir. 2012) (quoting *United States v. Guerrier*, 669 F.3d

1, 6 (1st Cir.2011)); *see also Miranda*, 384 U.S. at 444 ("By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.").

In the absence of a formal arrest, several factors commonly guide this determination, including "whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation."[4] *United States v. Masse*, 816 F.2d 805, 809 (1st Cir. 1987) (quoting *United States v. Streifel*, 781 F.2d 953, 961 n. 13 (1st Cir. 1986)); *see also United States v. Hughes*, 640 F.3d 428, 437 (1st Cir. 2011) (indicating that "details" such as whether the "ambiance was relaxed and non-confrontational" and whether the officers were polite and refrained from "heckling" the defendant "are entitled to some weight in determining whether a particular interrogation was custodial").

Looking to the totality of the circumstances, I conclude that although Jordan was subjected to an interrogation, it was not custodial in nature.[5] The interrogation was not conducted under "circumstances that are thought generally to present a serious danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508–09 (2012). Jordan voluntarily agreed to

[4] These factors help courts to understand whether the defendant was allowed to retain his "freedom of movement." *See Maryland v. Shatzer*, 559 U.S. 98, 112–13 (2010). While freedom of movement is an important consideration, as cautioned by the Supreme Court, "the freedom-of-movement test identifies only a necessary and not a sufficient condition for Miranda custody" which should not be given "talismanic power." *Id.* In the words of the First Circuit: "[C]ustody under *Miranda* means a suspect is not free to go away, but a suspect's lack of freedom to go away does not necessarily mean that questioning is custodial interrogation for purposes of *Miranda*." *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010).

[5] At the hearing, the parties stipulated that this interaction qualified as an interrogation and confirmed that the motion was bottomed exclusively on whether it was 'custodial.'

meet with the officers, was made aware of the agents' identities as federal officers, was not forced to join the officers in the vehicle, and was not searched or physically restrained (either by handcuffing or locked doors) at any point during the interview. *See United States v. Swan*, 842 F.3d 28, 31 (1st Cir. 2016) ("[the defendant's] voluntary decision to meet at the stationhouse strongly suggests that she was not 'in custody' for the purposes of *Miranda*."); *see also United States v. Poland*, No. CRIM. 05-69-P-H, 2006 WL 163409, at *3, *5 (D. Me. Jan. 19, 2006), *report and recommendation adopted*, No. CRIM. 05-69-P-H, 2006 WL 1030097 (D. Me. Apr. 14, 2006) (finding no custody in part because even though the interview occurred in the officer's vehicle, the officers did not require the defendant to enter the vehicle, tell the defendant he could not leave, handcuff or physically restrain the defendant, or lock the doors). The officers made no show of force – they were not in uniform, their weapons were not visible, and they did not "brandish" their weapons during the interview. *See Hughes*, 640 F.3d at 436 (stressing similar details to support a no-custody determination). Despite warning Jordan that he could be held liable for commission of several federal crimes,[6] the officers did not threaten him with arrest, yell at him, or berate him. *See Guerrier*, 669 F.3d at 6 (focusing on "the atmospherics" of an encounter and finding no custody when the prearrest interaction was "relatively calm and nonthreatening"); *see also United States v. Jones*, 187 F.3d 210, 218 (1st Cir. 1999) (determining that an interview was non-custodial where the officer "used a normal tone of

[6] Following the officer's warning that if they determined Jordan had lied to them, he could be charged with a "five-year felony" that would make him incapable of owning guns, the officers explicitly clarified: "I'm not threatening you or anything like that" and Jordan responded with a casual statement followed by a laugh. Response, Ex. 3, 9 (ECF No. 18-3, #57). In a similar manner, Jordan brushed off the officers' later 'accusations.' *Id.* 13, 23, 26.

voice" throughout the interaction). The record also establishes Jordan did not express any concerns or hesitation regarding speaking to the officers. *Guerrier*, 669 F.3d at 6 (indicating that the fact the defendant "expressed no qualms about talking with [police]" supports a finding of no custody). Additionally, the interview duration of approximately forty minutes was not of constitutionally significant length. *See United States v. Nishnianidze*, 342 F.3d 6, 14 (1st Cir. 2003) (holding that a forty-five-minute interview was "not exceptionally long"). The presence of three officers in the vehicle with Jordan does not automatically transform the interview into a custodial one and there was nothing about the particular way these three officers interacted with Defendant so as to raise constitutional concerns. *See Guerrier*, 669 F.3d at 6 (holding that three officers present at an interview conducted in an unmarked police vehicle "does not tip the custody balance in [the defendant's] favor either"). Ultimately, because Jordan remained free to terminate the interview and exit the vehicle, I am convinced he was not "not restrained to such a degree that a reasonable person in his position would have thought that he was under arrest." *Hughes*, 640 F.3d at 437.

It is important to note that a few factors present in this case, when taken in isolation, could militate toward a finding that the interview was custodial. However, when considering the totality of circumstances, it is clear that despite these factors, the interview was nevertheless non-custodial in nature. For example, although the ATF vehicle was not a "familiar" location to Jordan, "[q]uestioning of a suspect in a police vehicle does not automatically render a suspect 'in custody.'" *United States v. Ocean*, No. 1:15-CR-00040-JAW-09, 2016 WL 3211812, at *7 (D. Me. June 9, 2016). When, as here, the vehicle was

unmarked, unlocked, stationary, and parked in a public setting, the scales tip in favor of a determination that the interview was not custodial. *See id.* Additionally, while it is true, as Jordan argues, he was never told he could leave the vehicle and terminate the interview, it is also true he was never told he was *not* free to leave the vehicle. *See Poland*, 2006 WL 163409, at *3 (holding that an interview conducted in a police vehicle was non-custodial when, among other factors, "[n]either officer advised the defendant that he was free to leave or that he was required to stay"). Under these circumstances, Jordan's "freedom was not restrained to such a degree that a reasonable person in his position would have thought that he was under arrest." *Hughes*, 640 F.3d at 437.

To the extent Jordan's arguments focus on the evolution of the conversation as an indicator of a coercive atmosphere, I am unpersuaded. Although the initial stated purpose of the interview was to discuss Jordan's petition for the return of the seized firearms and ammunition – a topic the agents and Jordan did, in fact, discuss – the fact that the conversation strayed from that express topic does not transform the interview into a custodial one. Mistakenly conflating the standards by which courts determine whether an interrogation was custodial and whether a defendant's statements were unlawfully coerced, Jordan argues that "the coercive use of the forfeiture claim as a ruse" somehow elevated the interrogation past permissible thresholds. Reply, 4. This simply is not so. Gathering information from potential criminal suspects, even by way of ruse or misrepresentations is axiomatically permissible. *See, e.g., United States v. Boskic*, 545 F.3d 69, 79 (1st Cir. 2008) (reaffirming "the proposition . . . that 'confessions procured by deceits have been held voluntary in a number of situations'") (quoting *United States v. Byram*, 145 F.3d 405,

408 (1st Cir.1998)). For example, when addressing a defendant's argument that even though an interrogation was non-custodial, his statements were nevertheless unlawfully coerced because officers allegedly utilized "trickery and deception," the First Circuit noted that while "aggravated types of police chicanery can render a confession involuntary," the use of "chicanery" does not *automatically* render a confession involuntary. *Hughes*, 640 F.3d at 439. Instead, the First Circuit concluded: "Law enforcement officers often must fight fire with fire, and some degree of deception on their part during the questioning of a suspect is permissible." *Id.*; *see also United States v. Smith,* 919 F.3d 1, 14 (1st Cir. 2019) (reaffirming that "law enforcement is permitted to engage in basic 'manipulative behavior,' . . . so long as it does not impact the defendant's voluntary relinquishment of a right" and concluding that an officer's "minor deception" or "ruse" which facilitated a conversation with the defendant was not constitutionally offensive because at the moment the defendant was asked to relinquish a constitutional right, "he was aware of the true reason for the agents' visit"); *United States v. Flemmi*, 225 F.3d 78, 91 n.5 (1st Cir. 2000) ("Of course, trickery can sink to the level of coercion, but this is a relatively rare phenomenon."). Even if I were to accept Jordan's argument that the officers intentionally misled him regarding their ultimate purpose for the interview, the interaction remained non-custodial and I am unmoved that the officers' actions were coercive or deceptive so as to run afoul of constitutionally approved methods of interrogation.

CONCLUSION

Under the circumstances, Jordan was not subjected to a custodial interrogation. Because "*Miranda* applies only to custodial interrogations," Jordan was not entitled to *Miranda* warnings and his statements should not be suppressed. *United States v. Jones*, 187 F.3d 210, 217 (1st Cir. 1999); *see also Miranda*, 384 U.S. at 478 ("Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence."). For these reasons, Defendant Jordan's Motion to Suppress (ECF No. 14) is **DENIED**.

SO ORDERED.

Dated this 30th day of May, 2019.

/s/ Lance E. Walker
LANCE E. WALKER
UNITED STATES DISTRICT JUDGE